



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/145691

PRELIMINARY RECITALS

Pursuant to a petition filed December 03, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 08, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency met its burden to show that it correctly denied petitioner's FS due to income effective August 3, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Belinda Bridges
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 3, 2012 the petitioner filed an application for FS with the agency. Ex. 1.
3. On August 7, 2012 the agency issued a verification request to petitioner requesting verification of earned income with Milwaukee Public Schools. Ex. 2.

4. On or about August 17, 2012 verification of petitioner's earned income was received by the agency. See Ex. 6.
5. On September 5, 2012 the agency issued a notice of decision to petitioner stating that effective October 1, 2012 his household was not enrolled in FS because he was over the income limit. Ex. 3.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned income. 7 C.F.R. § 273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6 are allowed: (1) standard deduction; (2) earned income deduction; (3) medical expense deduction; (4) dependent care deduction for child care expenses; and (5) shelter expenses deduction. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>.

In this case, petitioner's earned income as a contract employee with MPS was prospectively budgeted, apparently based on the income information MPS provided. FS rules require that contractual income covered by an annually renewed contract must be averaged over a full year, even if the income is paid over less time. 7 C.F.R. §273.10(c)(3)(ii); *FS Handbook*, §4.3.2.1, no. 13; Ex. 5. School employees are listed specifically as persons subject to the rule. It does not matter if the person chooses to receive the income over 10 or 12 months. Even if the school district gives the person no choice but to receive the income over 10 months, the FS agency still must budget it over 12 months. The exception is if the person takes a second job during the off months; in that case the school income is budgeted over 10 months, and the income from the second job is budgeted over the off months.

In a hearing such as this for FS, it is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In other words, the agency must show why it did what it did. The agency's representative could not explain how and why the agency budgeted petitioner's earned income the way it did – budgeting the income over 7 months, despite the above referenced policy. The evidence the agency presented to show his income was illegible. See Ex. 6. Further, the notice of decision only references October, and does not explain his eligibility back to the date he applied in August. See Ex. 3.

I therefore find that the agency has not met its burden to show how it determined that his income was over the FS limit. As such I am remanding the matter for redetermination of benefits.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly denied petitioner's FS due to income effective August 3, 2012.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to (1) redetermine petitioner's FS effective August 3, 2012 to current, (2) issue any FS for which he is eligible accordingly, and (3) issue a notice of decision regarding same. These actions shall be taken within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

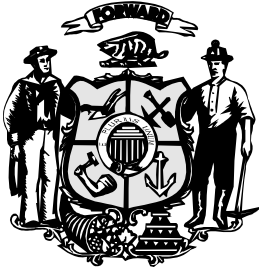
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of January, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 16, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability